

United States
Circuit Court of Appeals
For the Ninth Circuit.

LOUIS FASSOLLA, charged as Louis Fosella,
Plaintiff in Error,
vs.
UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court, for the Southern District of Cal-
ifornia, Southern Division.

FILED
JUN 24 1922
F. D. MONCKTON,
CLERK.



No.

United States
Circuit Court of Appeals
For the Ninth Circuit.

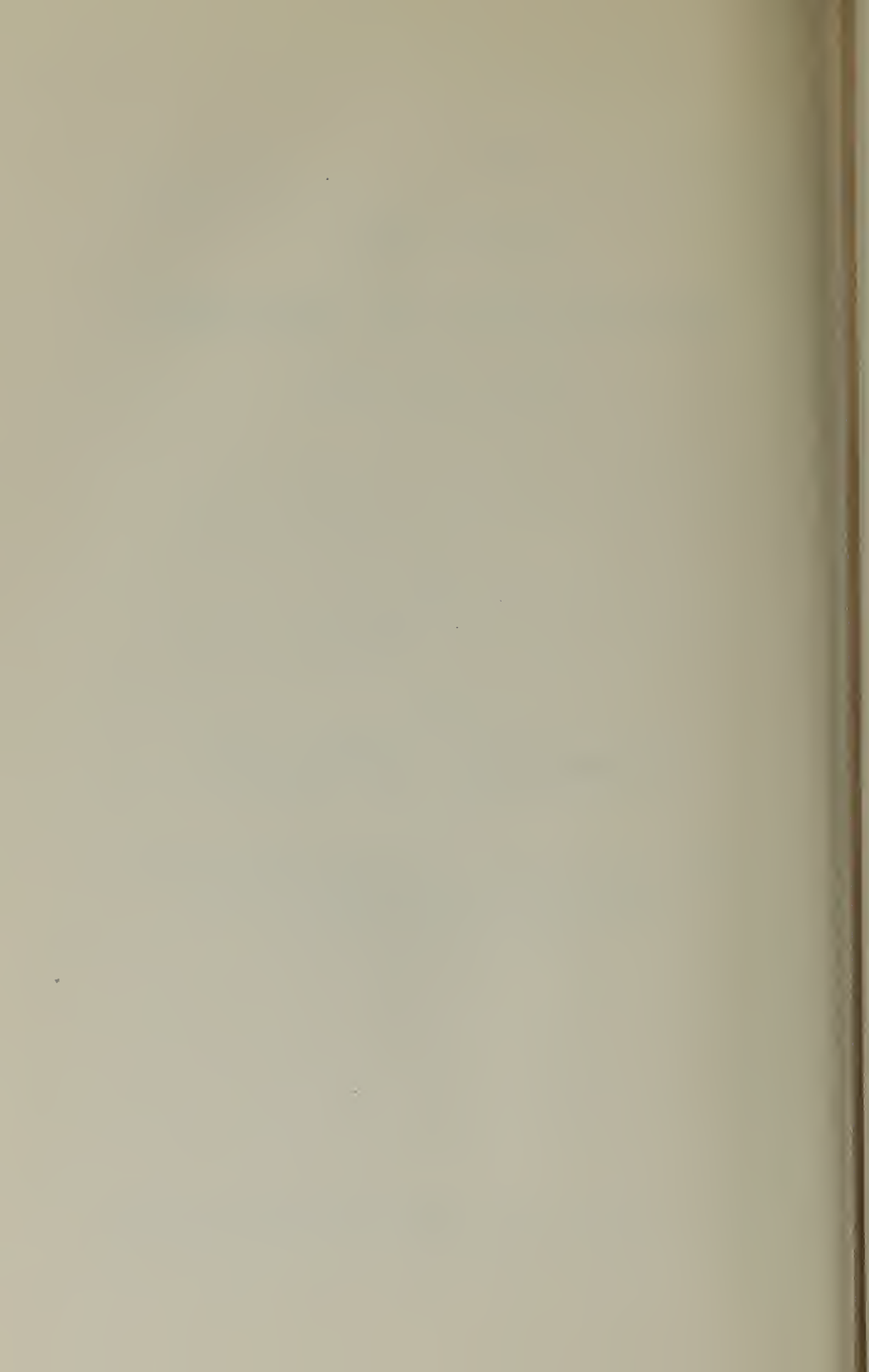
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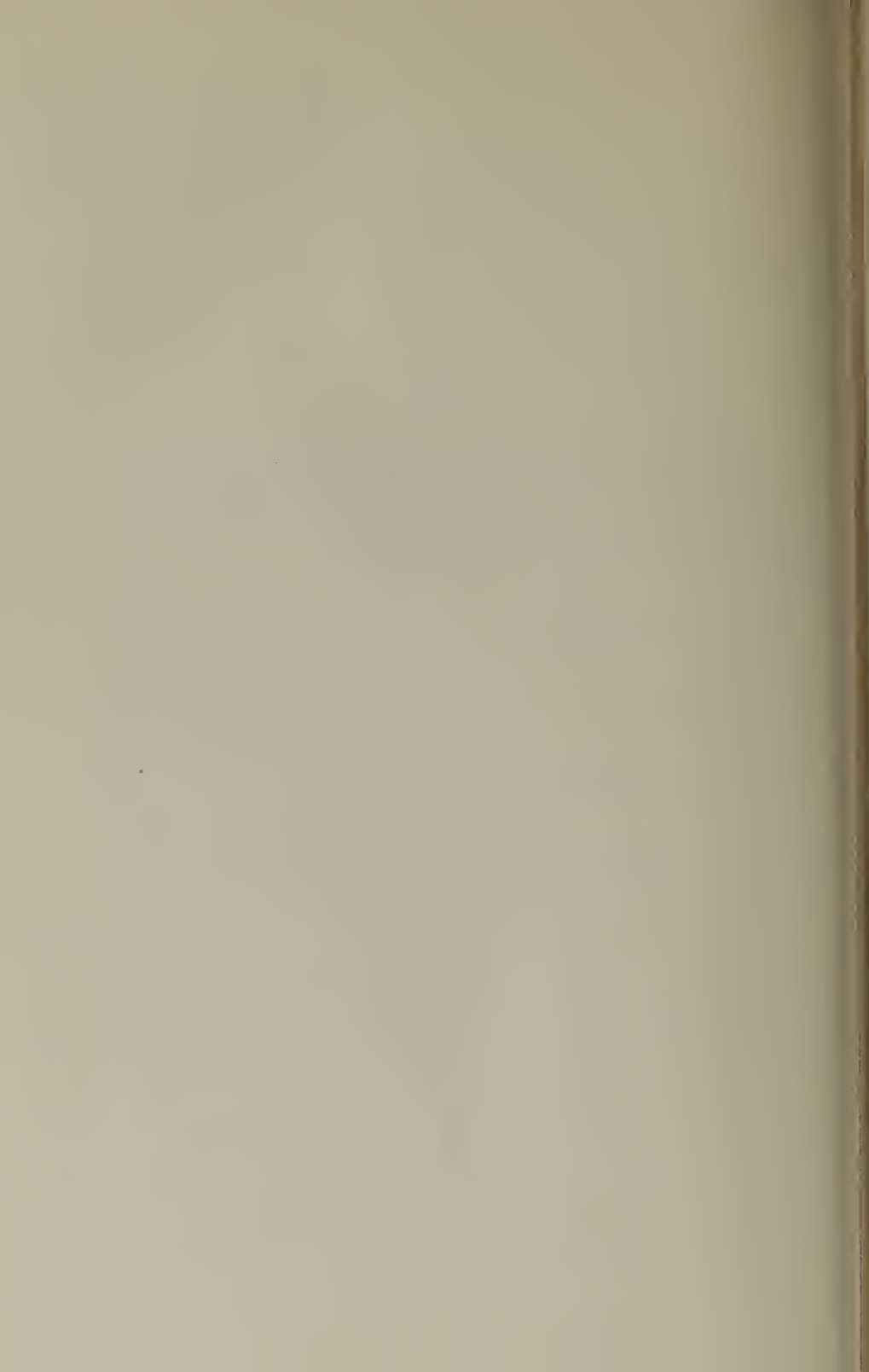
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Plaintiffs in Error:

LEO V. YOUNGWORTH, Esq., and
HARRY J. McCLEAN, Esq., Merchants National
Bank Building, Los Angeles, California.

For Defendant in Error:

JOSEPH C. BURKE, Esq., United States At-
torney;
MACK MEADER, Esq., Assistant United States
Attorney, Federal Building, Los Angeles,
California.

United States of America, ss.

To UNITED STATES OF AMERICA, and the
HONORABLE J. C. BURKE, United States District
Attorney, Southern District of California.

GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 25th day of May, A. D. 1922, pursuant to Writ of Error in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain proceeding United States versus Louis Fassolla, charged as Louis Fosella, defendant. and you are ordered to show cause, if any there be, why the judgment in the said proceeding mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable BENJAMIN F.
BLEDSOE United States District Judge for
the Southern District of California, this 18th
day of May, A. D. 1922, and of the Inde-
pendence of the United States, the one hun-
dred and Forty Sixth

Bledsoe

U. S. District Judge for the Southern District
of California.

[Endorsed]: Service of a copy of the within cita-
tion is hereby acknowledged this 20th day of May A.
D. 1922 Mark L. Herron Ass't United States Attor-

ney # Cr. 3831 S.D. In the United States Circuit Court of Appeals for the NINTH CIRCUIT UNITED STATES OF AMERICA vs. LOUIS FASSOLLA, charged as Louis Fosella. Citation Filed May 18, 1922 CHAS. N. WILLIAMS, Clerk Douglas Van Dyke Deputy

UNITED STATES OF AMERICA, SS.
THE PRESIDENT OF THE UNITED STATES
OF AMERICA,

To the Judges of the District Court of the United States, for the Southern District of California,
GREETING:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said District Court, before you between United States of America, Plaintiff, and Louis Fassolla, Defendant, a manifest error hath happened, to the great damage of the said defendant as by his complaint appears, and it being fit, that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, on the 25th day of May next, in the said

United States Circuit Court of Appeals, to be there and then held, that the record and proceedings aforesaid be inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

WITNESS, the HON. WILLIAM HOWARD
TAFT, Chief Justice of the United States,
this 28th day of April in the year of our
Lord one thousand nine hundred and twenty-
two and of the Independence of the United
(Seal) States the one hundred and Forty-sixth

Chas. N. Williams,

Clerk of the District Court of the United
States of America, in and for the Southern
District of California.

4-28-22

The above writ of error
is hereby allowed.

Trippet
Judge.

By R S Zimmerman
Deputy Clerk.

I hereby certify that a copy of the within Writ of Error was on the 28th day of April, 1922, lodged in the office of the Clerk of the said United States District Court, for the Southern District of California, Southern Division, for said Defendants in Error.

Chas. N. Williams

Clerk of the District Court of the United States
for the Southern District of California.

By R S Zimmerman
Deputy Clerk.

A copy of within Writ of Error is hereby, on this 28th day of April, 1922, lodged in the office of the Clerk of the said United States District Court, for the Southern District of California, Southern Division, for said Defendants in Error.

Approved as to form, as
provided in rule 45.

Mack Meader

Asst. U. S. Attorney.

Leo V. Youngworth

Harry J. McClean

Attorneys for Plaintiff in Error.

Chas. N. Williams

Clerk of the District Court of the United States
for the Southern District of California.

By R S Zimmerman

Deputy Clerk

[Endorsed]: 3831 Crim. United States Circuit
Court of Appeals for the NINTH CIRCUIT LOUIS
FASSOLLA, charged as Louis Fosella, Plaintiff in
Error vs. UNITED STATES OF AMERICA, De-
fendant in Error Writ of Error Filed Apr 28 1922
CHAS. N. WILLIAMS, Clerk By R S Zimmerman
Deputy Clerk

No. _____

Filed _____

Viol: Sections 3 and 21, Title II of the National Prohibition Act of October 28, 1919.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

THE UNITED STATES OF)	
AMERICA,)	:
Plaintiff,)	:
	:
- vs -)	INFORMATION.
	:
LOUIS FOSELLA,)	:
	:
Defendant.)	:

- - - - -

Leave of Court first being had and obtained, comes now Joseph C. Burke, Esq., United States Attorney for the Southern District of California, who for the said United States of America in this behalf prosecutes, on this 15th day of March, 1922, in the January term thereof, and for said United States gives the Court to understand and be informed:

That LOUIS FOSELLA whose full and true name, other than as herein stated, is to the affiant unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit: on or about the 5th day of November, 1921, at or near Los Angeles, County of Los Angeles, within the state, division and district aforesaid, and within the jurisdiction of the

United States and of this Honorable Court, did knowingly, wilfully and unlawfully sell to D. McD. Jones, certain intoxicating liquor fit for beverage purposes, to-wit: one-half gallons of wine containing alcohol in excess of one-half of one per cent by volume, at and for the sum of three (\$3.00) Dollars, lawful money of the United States; in violation of Section 3, Title II of the National Prohibition Act of October 28, 1919;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SECOND COUNT.

And the said Joseph C. Burke, Esq., Attorney for the United States as aforesaid, does further give the Court to understand and be informed:

That LOUIS FOSELLA, whose full and true name, other than as herein stated, is to the affiant unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit: on or about the 5th day of November, 1921, at Los Angeles, County of Los Angeles, within the state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully and unlawfully have in his possession certain intoxicating liquor fit for beverage purposes, to-wit: thirty-five (35) gallon demijohns of wine, one-half gallon bottle of wine, and three (3) sacks containing a number of bottles of illicit liquor, all of which said

liquor then and there contained alcohol in excess of one-half of one per cent by volume; in violation of Section 3, Title II of the National Prohibition Act of October 28, 1919.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THIRD COUNT.

And the said Joseph C. Burke, Esq., Attorney for the United States as aforesaid, does further give the Court to understand and be informed:

That LOUIS FOSELLA, whose full and true name, other than as herein stated, is to the affiant unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit: on or about the 5th day of November, A. D. 1921, at Los Angeles, County of Los Angeles, within the state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully and unlawfully maintain a common nuisance, to-wit: a room, building and place at Vermont Avenue and Redondo Boulevard, in said city, where intoxicating liquor for beverage purposes, to-wit: wine, containing alcohol in excess of one-half of one per cent by volume, was manufactured, kept, sold and bartered; in violation of Section 21 Title II of the National Prohibition Act of October 28, 1919;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

WHEREUPON, the said Attorney for the United States, who prosecutes as aforesaid in this behalf, prays the consideration of the court in the premises, and that due process of law may be awarded against the said LOUIS FOSELLA in this behalf to make him answer the said United States concerning the premises aforesaid.

Joseph C Burke

United States Attorney

T F Green

Assistant United States Attorney

UNITED STATES OF AMERICA)
 : SS.
Southern District of California)

T. F. GREEN, being first duly sworn on oath, says: That he is Assistant United States Attorney for the Southern District of California; that he has read the foregoing Information charging one LOUIS FOSELLA with violation of Sections 3 and 21, Title II of the National Prohibition Act of October 28, 1919;

Affiant further says that the matters and things set forth in said Information are true in substance and in fact.

T F Green

SUBSCRIBED AND SWORN to before
me this 14th day of March, 1922.

(Seal) Chas. N. Williams, Clerk U. S. District
 Court, Southern District of California.

By Louis J. Somers

Deputy

[Endorsed]: No. 3831 Cr IN THE DISTRICT COURT OF THE UNITED STATES for the Southern District of California Southern Division United States of America Plaintiff vs. Louis Fosella, Defendant. INFORMATION Filed Mar. 15 1922 At—min past — o'clock — M CHAS. N. WILLIAMS, Clerk Louis J Somers Deputy

At a stated term, to-wit: the January A. D. 1922 Term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the court room thereof, in the City of Los Angeles, on Wednesday the 15th day of March in the year of our Lord one thousand nine hundred and twenty-two.

PRESENT: THE HONORABLE OSCAR A. TRIPPET, District Judge.

UNITED STATES OF AMERICA,)	
	Plaintiff)
)
vs.		) No. 3831
		) Crim. S. D.
Louis Fosella,	Defendant)

T. F. Green, Esq., Assistant U. S. Attorney, appearing as counsel for the Government, having presented to the court a verified Information herein; now, upon motion of said T. F. Green, Esq., it is by the court ordered that said Information be filed; that the bond of defendant be fixed in the sum of \$1000.00 and that this cause be set for arraignment and plea for Monday, March 20th, 1922.

At a stated term, to wit: the January A. D., 1922 Term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof in the City of Los Angeles, on Monday the twenty-seventh day of March, in the year of our Lord one thousand nine hundred and twentytwo;
Present:

The Honorable Benjamin F. Bledsoe, District Judge.

United States of America, Plaintiff,)	
)	
vs.	)	No. 3831
	)	Crim. S. D.
Louis Fosella,)	
Defendant.)	

This cause coming on at this time for arraignment and plea; T. F. Green, Esq., Assistant U. S. Attorney, appearing as counsel for the Government and H. L. Dickson, Esq., appearing in court on behalf of the defendant herein who is not present, and said H. L. Dickson, Esq., having asked permission to interpose a plea of Not Guilty on behalf of his client and said permission having been given and thereupon a plea of Not Guilty having been entered on behalf of said defendant, it is by the court ordered that this cause be continued to the April Calendar for setting for trial.

At a stated term, to wit, the January Term, A. D. 1922 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the court room thereof, in the city of Los Angeles on Tuesday the

18th day of April in the year of our Lord one thousand nine hundred and twenty-two.

PRESENT: THE HONORABLE BENJAMIN F. BLEDSOE, District Judge.

UNITED STATES OF AMERICA,)	
	Plaintiff)
)
vs.		) No. 3831
		) Crim. S. D.
Louis Fosella, true name, Louis)	
Fassolla.)	

This cause coming on at this time for trial of defendant herein before a jury to be empanelled; Mack Meader, Esq. Assistant U. S. Attorney, appearing as counsel for the Government; defendant being present in court with his attorney H. L. Dickson, Esq., P. S. Noon, being also present as stenographic reporter of the testimony and proceedings and counsel for the respective parties having announced their readiness to proceed with the trial of this cause and the court having ordered that this cause be proceeded with and that a jury be empanelled herein;

Thereupon the following names were drawn from the jury box to-wit: J. L. Davidson; Ray Denn; Shannon Crandall; A. I. Smith; Fred G. Farner; Lew Labory; Edward H. Reich; Sam H. Harris; C. E. Howard; Ben Albertson; Antone Borchard and Chas. E. Toberman; and said jurors having been sworn on voir dire and passed for cause; and

Counsel for the respective parties not desiring to exercise their right to peremptorily challenge the jurors

now in the box, it is by the court ordered that said jurors be sworn in a body as the jury to try this cause, said jury being as follows, to-wit:

- | | |
|----------------------|------------------------|
| 1. J. L. Davidson, | 7. Edward H. Reich, |
| 2. Ray Denn, | 8. Sam H. Harris, |
| 3. Shannon Crandall, | 9. C. E. Howard, |
| 4. A. I. Smith, | 10. Ben Albertson, |
| 5. Fred G. Farner, | 11. Antone Borchard, |
| 6. Lew Labory, | 12. Chas. E. Toberman, |

and

Thereupon D. McD. Jones is called, sworn and testifies in behalf of the Government, is cross-examined by said H. L. Dickson, Esq.; is subject to re-direct examination by said Mack Meader, Esq., and is examined by the court; and

W. C. Jaffkey is called, sworn and testifies in behalf of the Government and is cross-examined by H. L. Dickson, Esq.; and

R. E. Steckel is called, sworn and testifies on behalf of the Government and is cross-examined by H. L. Dickson, Esq.; and John H. Pelletier is called, sworn and testifies in behalf of the Government and is cross-examined by H. L. Dickson, Esq., and

Now, at the hour of 11:50 o'clock A. M. the Government rests with reservation that it may later introduce certain evidence; and

L. Fassolla having been called, sworn and having testified in his own behalf; cross-examined by Mack Meader, Esq., and examined by the court;

Now, at the hour of 12:10 o'clock P. M. the court admonishes the jury that during the progress of this

trial they are not to speak to anyone about this cause or any matter or thing therewith connected and that until said cause is finally submitted to them for their consideration under the instructions of the court they are not to speak to each other about this cause or anything therewith connected, and declares a recess to the hour of two o'clock P. M.; and

Now, at the hour of two-twenty o'clock P. M. the court having reconvened and all being present as before, and the jury all being present; and

D. McD. Jones, a witness heretofore sworn, having been recalled and having testified further in behalf of the Government; cross-examined by H. L. Dickson, Esq., and examined by the Court; and

John H. Pelletier, a witness heretofore sworn, having been recalled and having testified in behalf of the Government and cross-examined by H. L. Dickson, Esq., and

R. E. Steckel, a witness heretofore sworn, having been recalled and having testified for the Government;

Now, at the hour of 2:43 o'clock P. M. the Government rests; and

Harry Hill, having been called, sworn and having testified in behalf of the defendant; and

D. J. O'Leary having been called, sworn and having testified in behalf of the Government and cross-examined by H. L. Dickson, Esq., attorney for the defendant; and

At the hour of 2:50 o'clock P. M. the court having ordered that each side be allowed ten minutes for the presentation of argument to the jury; and

At the hour of 2:53 o'clock P. M. Mack Meader, Esq., having argued in behalf of the Government; and

At the hour of 3:03 o'clock P. M. H. L. Dickson, Esq., having argued to the jury in behalf of the defendant; and

Mack Meader, Esq., having argued in rebuttal in behalf of the Government;

Thereupon at the hour of 3:11 o'clock P. M. the court instructs the jury with respect to the law involved in this cause and at the hour of 3:30 o'clock P. M. Deputy U. S. Marshal A. H. Blakeley is sworn to care for the jury during the deliberation of its verdict and thereupon the jury retires to deliberate upon its verdict; and

Now, at the hour of 3:55 o'clock P. M. the jury returns into court and having been asked if it has agreed upon a verdict thereupon states that it has so agreed, and upon being required to present the same, the said verdict is thereupon presented and as read by the clerk of the court is in words and figures as follows, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

United States of America, Plaintiff vs. Louis Fassolla, charged as Louis Fosella, Defendant. No. 3831

Cr. S. D. We, the jury in the above entitled cause, find the defendant GUILTY as charged in the first count of the Information; and GUILTY as charged in the second count of the Information and GUILTY as charged in the third count of the Information. Los Angeles, California, April 18th, 1922. Shannon Crandall, Foreman. and the verdict of guilty having been presented against the defendant herein as aforesaid the court orders the verdict filed, and excuses the jury from further attendance upon this court to the hour of eleven o'clock A. M. April 19th, 1922; and pronounces sentence upon defendant herein for the offence of which he stands convicted, namely, violation of the National Prohibition Act of October 28, 1919, and it is the judgment of the court that defendant stand committed to the Orange County Jail for the term and period of six months on the first count and for the term and period of six months on the third count, said sentence imposed on the third count not to commence to run until the expiration of sentence imposed on the first count; and it is further ordered by the court that said defendant pay unto the United States of America a fine in the sum of \$500.00 on the second count and stand committed to the said Orange County Jail until said fine is paid or defendant is discharged according to law, said sentence imposed on the second count not to commence to run until the expiration of sentence imposed on the third count; and it is further ordered by the court that the liquor seized herein be turned over to the United States Marshal

for destruction by said United States Marshal and upon motion of H. L. Dickson, Esq., the attorney for the defendant, it is by the court ordered that said defendant have a ten day stay of execution of sentence.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

* * *

United States of America, Plaintiff,)	
)	
Vs.	)	No. 3831
	)	Cr. S. D.
Louis Fosella, true name Louis Fas-)	
solla,)	
Defendant.)	

We, the jury in the above entitled cause, find the defendant Guilty, as charged in the First Count of the Information; and Guilty, as charged in the Second Count of the Information; and Guilty, as charged in the Third Count of the Information.

Los Angeles, California, April 18th, 1922.

Shannon Crandall
FOREMAN.

[Endorsed]: Filed Apr 18 1922 Chas. N. Williams, Clerk Douglas Van Dyke Deputy

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION.

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)
vs.)	BILL OF
	) EXCEPTIONS
LOUIS FASSOLLA, charged as)	No. 3831
Louis Fosella,)	Criminal
Defendant.)	

- - - - -

Be it remembered that heretofore, to-wit: on the 18th day of April, 1922, the above entitled action came on regularly for trial, the plaintiff appearing by Mack Meader, Assistant United States District Attorney and the defendant appearing by H. L. Dickson, Esquire, and that thereupon the following evidence was introduced, and proceedings taken, and none other except as are hereinafter set forth.

D-McD. JONES

Was a witness for and on behalf of the plaintiff, and being duly sworn, testified that he was a police officer of the City of Los Angeles on the 5th day of November, 1921; that he saw the defendant on the 5th day of November.

Q Under what circumstances?

A November 5th, about 9 o'clock Officer Steckel, Jaffkey, Captain Pelletier, McCarthy and myself were in front of the residence of Lou Fosella. We caught

(Testimony of D. McD. Jones.)

a machine with a half gallon of liquor in it, driven by Herman Dedlinger, which was purchased from Louis Fosella.

That thereafter the witness secured a search warrant and returned to the defendant's house and the witness went to the front door and the defendant sold him a half gallon of wine for \$3.00, giving defendant a \$5.00 bill and receiving \$2.00 in change, also the wine; that he left the place to return to the machine and Officers Jaffkey and Steckel returned to the house and later the witness with other officers entered the premises and served the search warrant on the defendant. That the officers searched the premises and found a quantity of liquor in two or three of the rooms; that the liquor seized was taken to the University Police Station where the liquor was marked for identification. That the sale was made in the doorway of defendant's home between 11 and 12 o'clock at night. That at the time the money changed hands and the half gallon of wine was received, Officers Jaffkey and Steckel and Captain Pelletier were standing back of him, Jaffkey approximately twenty feet, and the other officers farther away. That the light used in making the change was a flashlight in the hands of the witness. That in making the purchase, witness used a pass-word "Redondo"; that he had been informed by Herman Dedlinger that he could not purchase the wine unless he used that password; that on the strength of that password the defendant gave

(Testimony of D. McD. Jones.)

him a half gallon of wine for \$3.00. That when the purchase was made the witness gave the defendant a "marked" \$5.00 bill, the numbers of which had been taken. That the defendant was afterwards searched for the \$5.00 bill and the same could not be found. That from three to five minutes elapsed between the time the purchase was made and the time when the witness attempted to recover the marked money. That there was a large sum of money scattered between the mattress in the bedroom occupied by the defendant, but that the marked \$5.00 could not be found. That the officers searched various places in the room in which they thought a \$5.00 bill might be concealed—in clothing, wearing apparel, trunks, baggages, and made an extensive search for it.

W. C. JAFFKEY

A witness for and on behalf of the plaintiff, being first duly sworn, testified as follows:

That he was a police officer of the City of Los Angeles on the 5th day of November, 1921.

Q Tell the jury under what circumstances you saw the defendant about the 5th day of November, 1921?

A I was standing about 25 feet away from the house, behind a palm tree, when Officer Jones was at the door talking to Lou Fosella and I could see Lou Fosella hand Officer Jones something which Officer Jones said was the two one dollar bills; and after Officer Jones left the place I walked over to the ma-

(Testimony of W. C. Jaffkey.)

chine before Jones did and met Officer Jones at the machine, and he said he bought a half gallon of wine, and to put that in the machine;

That thereafter Officer Steckel and Pelletier, and the witness, and one other officer, went to the house to make another buy, but was refused; that they then forced an entrance through the door, and upon gaining admittance, served the search warrant by reading the same to the defendant. That on making a search of the premises, they found two or three sacks of bottles of wine, and a quantity of empty bottles and a lot of demijohns. Some of the demijohns were full and a lot of them partially filled, and some empty. That at the time of the purchase of the half gallon of wine by Officer Jones, the witness was about 25 feet away from Jones; that he saw the flashlight turned on at that time by Officer Jones.

Q Did you see a package of any kind pass from the defendant to Officer Jones?

A No, I didn't see any.

Q Did you see anything pass from Officer Jones to the defendant?

A No, I didn't see that because the light wasn't on then.

That the night was dark.

Q Did you see the buy made? Did you see any package or bottle handed Officer Jones?

A I did not.

(Testimony of W. C. Jaffkey.)

That he helped in the search to find the \$5.00 "marked" bill; that it was all of five minutes between the time when the purchase was made and the time when the search was instituted.

R. E. STECKEL

A witness for and in behalf of the plaintiff, being first duly sworn, testified as follows:

That he was a police officer in the City of Los Angeles on the fifth day of November, 1921.

Q Just tell who was present and under what circumstances you saw the defendant?

A There were Officers Jones and Jaffkey, Captain Pelletier, Officer McCarthy and myself. We had apprehended a machine in front of the place driving away, containing some wine, liquor, and had obtained what the man said was a password that would enable us to buy liquor. Officer Jones went up and in, went into the place. Was gone for some three, four, five minutes, with Jaffkey standing out in the yard and Captain Pelletier and I across the street. Then Jones and Jaffkey came back and Jones had a container which he said was wine. Then we drove the machine up into the driveway and stopped. Jaffkey and I got out of the machine and Jaffkey walked up on the steps and knocked at the door. Pretty soon a man came to the door and Jaffkey tried to buy some wine. He said he was out * * * * I again knocked at the door and he opened the door and I said "We

(Testimony of R. E. Steckel.)

are from Redondo. We would like to buy some wine", and he started to shut the door and I said "Just a minute"; I said "We are police officers."

That thereafter the officers gained entrance to the house and took the defendant in the bedroom and there searched him and Officer Jaffkey read the search warrant. That they then searched the house and found a quantity of wine and a number of bottles, some filled and some empty, and several demijohns containing various quantities of wine, from one gallon up to three or four. They then searched Fosella's room for the \$5.00 bill; that they found a quantity of bills of various denominations, but failed to find the \$5.00 bill which they were looking for.

JOHN H. PELLETIER

A witness for and in behalf of the plaintiff, being first duly sworn, testified as follows:

That he was a police officer of the City of Los Angeles on the 5th day of November, 1921, and saw the defendant on that date.

Q Tell the circumstances of seeing him on that night. Who was present, what occurred, and what was said and done?

A With Officers Jones and Steckel and Jaffkey we went out to his place near Gardena and watched that place for a while; saw a young fellow with an Overland Coupe go in there and come out with a package and we apprehended that young fellow and found out what he had and he told us -

(Testimony of John H. Pelletier.)

MR DICKSON:

I am going to interpose an objection * * * *
THE COURT:

Yes, all right sustained.

THE WITNESS:

After we had determined * * * Officer Jones went up and knocked on the door and was admitted and some time after that, a few minutes after that he came out with a package and brought it over to the automobile where I was and then we had some discussion as to whether or not it would be advisable to make another buy or attempt to make another buy and Officer Jaffkey and Steckel went back there for the purpose of making another buy. Officer Jones and I stayed in the machine at the side of Fosella's house and of course I don't know what took place when they went back. * * * * We made a search for this "marked" \$5.00 bill and we could not find it. We then searched the place for liquor and found a considerable quantity of liquor, some five gallon demi-johns that had liquor in them and a number of bottles.

That the defendant's wife was present at the time; that after they started searching for the money they had her get out of bed and they looked in the bed, under the mattress, and in the bed for that \$5.00, but they didn't find it.

L. FOSELLA

Defendant, a witness for and in his own behalf, being first duly sworn, testified as follows:

(Testimony of L. Fosella.)

That he lived on Hawley Street in Gardena during the month of November, 1921 and was engaged in the business of buying and selling cows and in the dairy business. That on the night of November 5th, 1921, he heard a knock on the door, a few times at about two o'clock in the morning. That he went to the door and when he opened the same, four police officers came in; that they came into his place, searched him, searched his place, got three demijohns of wine which they took away. That they looked in his bed and every place for money, but they did not find the money. That he did not sell to Officer Jones or to anyone else any quantity of wine for any sum.

That he has lived in Gardena for four years and during the entire time he has been engaged in the dairy business; that at the time of the entry of the police officers there were two milkers in the house with him and his wife.

That the officers found a quantity of wine underneath the floor of his home; that he had had the same about two or three years. That the officers found a barrel of vinegar out in the barn. That the wine which the defendant had on his premises was made by him for his own use; that he did not know the fellow Herman about whom the officers testified; that he had never seen him.

THE COURT: When did you make this wine you had there?

(Testimony of L. Fosella.)

A Make long time ago. Can't make it all the time.

THE COURT:

When did you make this wine you had there in the house?

A Make about September, something like that.

THE COURT:

Last September?

A No, year ago September.

THE COURT:

Q A year ago September?

A Yes.

THE COURT:

Q Had it all that time? How much did you have?

A About fifteen gallons.

THE COURT:

How much did you make originally?

A Make fifty gallons.

THE COURT:

When was the last time you made it?

A Make it all one time.

THE COURT:

When was the last time you made it?

A Year before September.

THE COURT:

That was September, 1920?

A Yes sir.

(Testimony of D. McD. Jones.)

D. McD. JONES

Was recalled to the stand and testified that after the search warrant was served at the defendant's place the night of November 5th, that this wine in various lots was seized by virtue of the search warrant; that he made a test of the wine by taste; that he had made various tests of wine by tasting. That the liquor he tested the night of November 5th which was seized at the home of the defendant, contained over one-half of one per cent alcohol; that it was claret wine; that he knew it contained more than one-half of one per cent alcohol by the taste of it; that they seized and carried away three gunny sacks containing quarts, and gallons of wine, and two demi-johns of wine and one demijohn containing brandy.

JOHN G. PELLETIER

Was recalled to the stand and testified:

That he made a personal test of the liquid contents of several of the demijohns and bottles found at the home of the defendant on November 5th; that he tasted the liquor that was in the half gallon jar and then tasted some that was in one of the big five gallon demijohns, and tasted a quart bottle of wine. That such contents contained alcohol in excess of one-half of one per cent and was fit for beverage purposes. (It was stipulated that the witness was qualified to express opinion)

(Testimony of John G. Pelletier.)

That to the best of his knowledge, there were about thirty quarts of wine and three large demijohns taken from the defendant; that he sampled only one of the quart bottles and that he did not know what was in the other bottles.

R. E. STECKEL

Was recalled to the stand and testified:

That he tasted the contents of one five gallon demijohn which contained claret wine, containing alcohol in excess of one-half of one per cent; that the two or three other demijohns were not tasted by him but smelled, and that the smell was identical with claret wine.

HARRY HILL

A witness for and in behalf of the defendant, being first duly sworn, testified that he resided in the City of Los Angeles; that he knew the defendant, and had known him for nineteen months. That he had known him at his home near Gardena; that he knew people who lived about him; that he knew his reputation among his people with whom he associated and lived as a law abiding citizen; that that reputation was good.

D. J. O'LEARY

A witness for and in behalf of the plaintiff, being first duly sworn, testified as follows:

(Testimony of D. J. O'Leary.)

That he is a Federal Prohibition Agent; that he had been at the defendant's ranch three different times looking for a still. That he did not find a still, but that he found a quantity of liquor; that he never arrested the defendant.

Thereafter, the Court instructed the Jury as follows:

I will ask you to listen carefully, gentlemen, to the instructions of the Court:

The defendant is charged with three different violations of the National Prohibition Act; the first one involving the asserted sale to D. McD. Jones of a half gallon of wine containing alcohol in excess of one-half of one per cent., fit for beverage purposes, on or about the 5th of November, of last year, for the sum of three dollars; the second one charging the unlawful possession of three five-gallon demijohns of wine, a half-gallon bottle of wine, and three sacks containing a number of bottles of illicit liquor, all of which liquor then and there contained alcohol in excess of one-half of one per cent.; and the third count charging the maintenance of a nuisance, to-wit, a room, building and place at Vermont Avenue and Redondo Boulevard, this city, where intoxicating liquor for beverage purposes, to-wit, wine containing alcohol in excess of one-half of one per cent. was manufactured, kept, sold and bartered; all in violation of the statutes made and provided, and contrary to the peace and dignity of the United States.

The defendant's plea is not guilty, and it is for you to say whether or not the charge laid is true.

Now, the information that I have just read to you is, of course, no evidence of the defendant's guilt; it is a mere charge or accusation brought against him, and you are not to be prejudiced by it, or to consider it as any evidence; neither are you, if you are aware of the penalty provided by law for the commission of any of these offenses, to be at all concerned with, or controlled by them. Your duty is to say whether or not the man is guilty, whether or not he has violated the law, whether or not he has conducted himself as alleged in the information; and then it becomes the duty of the Court, upon consideration of all the circumstances, and with the obligation that rests upon the Court to protect the interests of society, to say what judgment, if any, shall be rendered upon the defendant, by virtue of a conviction, if you shall find him guilty—and you may, I think, in good faith rely upon the good judgment of the Court to be indulged in for the purpose of meeting the requirements of social security, if you should find the defendant guilty.

Is he guilty as charged?

You, gentlemen, are the exclusive judges of the facts in the case; you are the exclusive judges of the credibility of the witnesses; it is for you to say where the truth is in this case. Your power in this regard is not an arbitrary one, but is to be exercised with legal discretion, and in subordination to the rules of evidence, which will be given you by the Court.

In the Federal Courts it is the function, or the province, of the Court to express its opinion upon the evidence of the case, upon the merits of the controversy, and during the course of these instructions I may express some opinion to you upon the evidence introduced here, or the testimony received; but if I do, you are to understand and remember at all times that no expression of opinion coming from the Court with respect to the facts of the case is conclusive or binding upon you. It is your duty, out of the abundance of your own good sense, good judgment, good discretion, and experience as men, to say what the truth in the case is.

In passing upon the credibility of the witnesses, you will remember that every witness is presumed to speak the truth, but this presumption may be repelled by the manner in which a witness testifies; that is, if it is straightforward or halting, expressive of candor and frankness or suggestive of chicane or concealment. The presumption may be repelled by his appearance on the stand, by the character of his testimony, by the giving of false or perjured testimony, if any has been given; by his motives in the case, or his interest in the case—in the outcome, one way or the other; or by contradictory evidence.

So, also, a witness may be impeached by the party against whom he was called, by contradictory evidence, or by evidence given at other times inconsistent with his present testimony. If you believe any witness has been impeached, or that the presumption of truthfulness

ness attaching to the testimony of such witness has been repelled, then you may accord, or give, the testimony of such witness such degree of credibility, if any, as you may think it entitled to.

Now, the defendant has offered himself as a witness in the case here. That is his duty—it is his right, I mean to say—and you are to sit in judgment on his testimony in accordance with the same general rules that you might apply with respect to the testimony of others; looking to his manner, the character of his testimony, whether or not it is contradictory, the probability or improbability of it, and so forth, and, in addition to that, you are to weigh his testimony in the light of the fact that he is the defendant in the case, and his relation to the outcome of the case, and, in the consideration of all these things, place such a degree of credibility upon his evidence as you may feel it is entitled to.

You are not bound to decide in conformity with the declarations of any number of witnesses which do not produce conviction in your minds, as against a less number, or against the presumption of other evidence satisfying your minds.

This being a criminal case, gentlemen, the guilt of the defendant, of course, must be established beyond a reasonable doubt, and the burden of establishing such guilt rests upon the government.

The defendant here has offered evidence, gentlemen, of the possession of a good reputation in the community with respect to the trait involved; that is, his

disposition to obey the law; and if you believe that he is possessed of a good reputation in that respect, this is a circumstance tending, in a greater or less degree, to the establishment of his innocence, and it must be considered in connection with all the other facts and circumstances of the case, and it may be sufficient in itself to raise a reasonable doubt of the defendant's guilt. But if, after full consideration of all the evidence adduced, the jury believes the defendant to be guilty of the crime charged, they should so find, notwithstanding the fact that proof of good character, with respect to the trait involved, may have been offered and admitted.

The law, gentlemen, presumes a defendant charged with a crime to be innocent until proven guilty beyond a reasonable doubt, and this presumption remains with the defendant, and will of itself avail to acquit him, unless it be overcome by proof of his guilt beyond a reasonable doubt, and if you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence you should do so, and in that case find the defendant not guilty. A reasonable doubt, gentlemen, is a doubt based on reason, and which is reasonable in view of all the evidence; and if, after an impartial comparison and consideration of all the evidence, or from a want of sufficient evidence on behalf of the government to convince you of the truth of the charge, you can candidly say you are not satisfied of the defendant's guilt, then you have

a reasonable doubt, and you should acquit him. But if, after such impartial comparison and consideration of all the evidence, you can truthfully say you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, then you have no reasonable doubt, and you should convict him.

By such reasonable doubt, gentlemen, you are not to understand that all doubt is to be excluded. It is impossible, in the determination of these questions, to be absolutely certain. You were not down there on this evening, the evening in question, and you cannot be absolutely certain as to what did take place. You are required to decide the questions submitted to you upon the strong probabilities of the case, and to justify a conviction the probabilities must be so strong as not to exclude all doubt or possibility of error, but as to exclude reasonable doubt.

When, after weighing all the evidence, you have an abiding conviction and belief that the defendant is guilty, it is your duty to convict, and no sympathy - sympathy for him, or for his family, or for his plight - justifies you in seeking for doubts by any strained or unreasonable construction or interpretation of law, or evidence, or facts.

The law, gentlemen, under which this prosecution is based, as I have indicated to you before, is the National Prohibition Act, which contains a number of

provisions not relevant to this controversy, and some that are. One is to the effect that:

“The word ‘liquor’ or the phrase ‘intoxicating liquor’ shall be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt, or fermented liquor.....by whatever name called, containing one-half of 1 per cent or more of alcohol by volume which are fit for use for beverage purposes.”

Then it is also provided that:

“No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect (The Court: Two years ago last January) manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.”

That really was the purpose of the amendment to the Federal Constitution, and the purpose of this law, which was enacted in furtherance of its practical enforcement. This forbids the manufacture, the sale, the possession of intoxicating liquor except as authorized in this Act, and the only exceptions authorized in the Act are the manufacture, or the sale, or the possession of liquor for non-beverage purposes; that is, for medi-

cinal purposes, for sacramental purposes, for scientific purposes, and the lawful possession of liquor in the home, to which I shall refer in just a moment.

There is no suggestion of any permit here. Any sale of that sort, or a manufacture, or a possession, for any of the purposes mentioned, would have to be pursuant to a permit. There is no permit here; we need not be concerned with that feature of the case.

Then it is also provided that:

“It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this title or which has been so used, and no property rights shall exist in any such liquor or property.”

Then it is provided further:

“After February 1, 1920, the possession of liquors by any person not legally permitted under this title to possess liquor shall be prima facie evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this title.”

the mere possession of it is prima facie evidence that it is wrongful possession, and the burden is on him who has possession to show the possession is a rightful one.

Then there is this provision, which I referred to a moment ago:

“But it shall not be unlawful to possess liquors in one’s private dwelling while the same is occu-

pied and used by him as his dwelling only and such liquor need not be reported, provided such liquors are for use only for the personal consumption of the owner thereof and his family residing in such dwelling and of his bona fide guests when entertained by him therein; and the burden of proof shall be upon the possessor in any action concerning the same to prove that such liquor was lawfully acquired, possessed, and used."

Now, the possession in the home, to be a lawful possession, a rightful possession, of liquor, it must have been acquired lawfully, and if the liquor was manufactured in violation of law at a time when the Eighteenth Amendment was in force, that feature of the law forbidding the manufacture of liquor, then there could not be lawful possession of it, even in the home.

So now, gentlemen, the question for you to determine upon the evidence here is really a very simple one - a simple question.

These officers testified - one of them - that a purchase was made from the defendant for the sum of three dollars of a gallon, or a half gallon, of this wine that was in this house there. The defendant denies that; he says there was no purchase. You will remember he testified that nobody else came to his home that night except that these four officers came at one time and thrust themselves in there, at about two o'clock in the morning. Now, of course,

if you believe the story of the defendant, that he did not make any sale, and believe the story of the defendant to the effect that the wine was there for his own use only, then, of course, he could not be guilty of maintaining a nuisance, or could not be guilty of making a sale; although he could be guilty of having unlawful possession of wine which had been unlawfully manufactured. But, of course, the main question in the case is the question of sale, because upon that would hinge the question of the maintenance of the nuisance, with which he is charged on one count in the information.

You have the denial of the defendant that he made the sale, and, as opposed to that, you have the positive testimony of the officer that the sale was made, and the testimony of the other officers that one of them went in while they waited outside, and came back, and they saw some sort of a transaction occurring there at the front door.

Now, the proposition to be considered by you is a very simple one. Are you going to accept the testimony of the defendant, and refuse to accept the testimony of these officers? You cannot believe the two stories. They cannot be consistent; they are not consistent. The defendant denies that anybody came there until the four officers came all together; the officers testified that one went there first and made a purchase. Now, to accept the defendant's story you have got to disbelieve the testimony of the officers. Is there anything in the case which justifies you in disbeliev-

ing the testimony of these police officers? Has there anything developed here which would make it seemingly in keeping with your duty? Is there anything in the nature of their testimony, or the improbability of it, or the unreasonableness of it, in the conduct of the officers, the position they hold; or has anything taken place: is there anything to justify you in coming to the conclusion that these officers have deliberately perjured themselves on the stand? Because that really is the conclusion you must come to if you accept the statement of the defendant. Of course, if you do, if you believe he told the truth and that they committed perjury, then you ought to acquit him. If, however, you believe they told the truth, and that he failed to tell the truth, then you ought to convict him; because by this law he would be guilty if you believe the statements made by the officers as to what took place.

So I say, it is just a question, gentlemen, of whom you are going to believe in your consideration of the cause, and what your good judgment, and your consciences, and your sworn declaration that you will obey, and uphold, and enforce, the law of the land, with respect to everybody, tell you to depend upon - the view you take of the situation - as to what your conclusion will be.

Of course, there is no doubt about this at all: that if there be that in the testimony of the defendant, considered in connection with all of the circumstances in the case, and considered in connection with the testi-

mony of other persons, that causes you to entertain a reasonable doubt as to what took place there, or as to his guilt, it is your duty to return a verdict of not guilty. No question about that. In this Court it will not be permitted, insofar as we can prevent it, for any man to be convicted or adjudged guilty wrongfully. There is no question as to that. But at the same time, while you owe a duty to the defendant in that behalf, you owe another duty to society in the event the proof adduced and the testimony convince you beyond a reasonable doubt, as reasonable men, of the guilt of the defendant, by finding a verdict of guilty.

Now, a good deal was said in argument about other amendments—something said about other amendments to the Constitution. There are none of them involved here. There is no question of a search warrant being involved here. No officer of the United States Government was in any wise concerned with this, and it is only officers of the United States Government whose misuse of a search warrant may be inquired into in this Court. There is nothing of that in the case at all.

As to the search warrant, presumably it was valid. They went to get it, and the judge issuing it, without doubt, acted upon proper and adequate information, in a judicial capacity.

So there is no suggestion here of any violation of anybody's constitutional rights. If there was that which justified the issuance of a search warrant, and justified these men going to that man's house under the circumstances to see if the law was being violated,

that matter is of no concern in this case; it does not arise in this particular case.

So also the question about the use of the revolver. It could easily be true that a man bidden to come from his bed in the middle of the night might, not unnaturally, might, not unrighteously, assume or contemplate some attack upon him, or robbery—one or the other. That could easily be true, and it might be that this man would have ample justification for possessing and providing himself at that time with a revolver; but that hasn't anything to do with this case. The question is, did this defendant make and sell to the witness Jones, before a search warrant was talked about, or before the revolver was thought of, liquor unlawfully? If he did, and you believe it beyond a reasonable doubt, you ought to convict him. If you have a reasonable doubt of it, of course it is your duty to acquit him.

Any exceptions to the charge?

MR. MEADER: No exceptions.

MR. DICKSON: No exceptions.

Thereafter the Jury returned a verdict of "Guilty" upon all three counts of the information herein.

Thereafter the Court sentenced the defendant to imprisonment in the County Jail of Orange County for a period of six months on the first count of the information herein, and to imprisonment in the County Jail of Orange County for six months on the third count of information herein, and imposed a fine of \$500.00 on the second count of the information herein, the de-

fendant to stand committed to the Orange County Jail until the fine was paid. The sentence on the first and third counts not to run concurrently.

Thereafter the defendant served and filed within the time required by law, and in the manner required by law, his petition for writ of error, which said petition was filed on the 27th day of April, 1922.

That thereafter and on the 27th day of April, 1922, the defendant prepared, served and filed his assignment of errors.

That said bill of exceptions contains all of the evidence received and heard by the court in said case, and contains the proceedings on the trial of said cause as aforesaid, and the same is hereby settled and allowed this 26 day of May, 1922.

Bledsoe
District Judge.

It is stipulated that said Bill of Exceptions contains all the evidence received by the Court, and all proceedings on the trial of said cause.

Received copy of said bill of exceptions May 26th, 1922.

J. C. BURKE, U. S. District Attorney,
By Mack Meader,
Assistant U. S. District Attorney.

[Endorsed]: No. 3831, Cr. IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION. UNITED STATES OF AMERICA, Plaintiff, vs. LOUIS FAS-

SOLLA, charged as Louis Fosella, Defendant. BILL
OF EXCEPTIONS Filed May 26, 1922. CHAS. N.
WILLIAMS, Clerk By Murray E Wire Deputy

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION.

UNITED STATES OF AMERICA,	)	Cr. 3831, S. D.
)	
Plaintiff,)	
)	
vs.	)	AT LAW
	)	ASSIGNMENT
LOUIS FASSOLLA, charged	)	OF ERRORS.
as Louis Fosella,)	
)	
Defendant.)	

The defendant in this action in connection with his petition for writ of error, makes the following assignment of errors, which he avers occurred upon trial of the cause:

1. The court erred in using the following language in the charge to the jury:

"Now a good deal was said in argument about other amendments; something said about other amendments to the Constitution. There are none of them involved herein. There is no question of a search warrant being involved. No officer of the United States Government was in anywise concerned with this and it is

only officers of the United States Government whose misuse of a search warrant may be inquired into in this court. There is nothing of that in the case at all."

2. The court erred in using the following language in the charge to the jury:

"So there is no suggestion here of any violation of anybody's constitutional rights."

3. The said court erred in using the following language in the charge to the jury:

"The question is did this defendant make and sell to the witness, Jones, before a search warrant was talked about or before a revolver was thought of, liquor unlawfully. If he did and you believe it beyond a reasonable doubt, you ought to convict him."

4. The court erred in instructing the jury to convict on each of the three counts of the information if they believed the defendant guilty of the separate acts as laid in the information in that the same evidence is offered in support of the three counts.

5. The court erred in instructing the jury that they should convict the defendant on the count charging unlawful nuisance and unlawful sale and unlawful possession when the proof offered was as to one act.

6. The court erred in using the following language in the charge to the jury:

"But, of course, the main question in the case is the question of sale because upon that would hinge the question of the maintenance of the nuisance, with which he is charged on one count of the information."

7. The evidence is insufficient to support the verdict of guilty and the sentence imposed in that the evidence shows a single unlawful act which is insufficient to support a verdict of guilty on more than one of the counts as laid in the information.

WHEREFORE, the defendant prays that the judgment of the District Court may be reversed.

Leo V Youngworth

Harry J McClean

Attorneys for Defendant

[Endorsed]: Cr. 3831, S. D. IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION. UNITED STATES OF AMERICA, Plaintiff, vs. LOUIS FAS-SOLLA, charged as Louis Fosella, Defendant. AT LAW ASSIGNMENT OF ERRORS. Filed Apr 27 1922 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy LEO V YOUNGWORTH HARRY J. McCLEAN 602 Mer. Nat'l. Bk. Bldg., Attorneys for Defendant

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	Cr. 3831, S. D.
)	
Plaintiff,)	
	)	PETITION
vs.	)	FOR WRIT OF
LOUIS FASSOLLA, charged	)	ERROR AT
	)	LAW
as Louis Fosella,)	
)	
Defendant.)	
)	

And now comes Louis Fassolla, defendant herein, and says that on or about the 18th day of April, 1922, this court entered judgment herein against the defendant whereby the defendant was sentenced to imprisonment in the County Jail of Orange County for a period of six (6) months on the first count of the information herein, and in the County Jail of Orange County for a period of six (6) months on the third count of the information herein, and to pay a fine of Five Hundred Dollars (\$500) on the second count of the information herein, and stand committed to the said County Jail of Orange County until the said fine is paid. The said sentence of imprisonment to run consecutively; and in which said judgment and the proceedings had thereunto in this cause certain errors were committed to the prejudice of this defendant, all

of which will more in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE, this defendant prays that a writ of error may issue in this behalf out of the United States District Court for the Southern District of California, Southern Division, to the Circuit Court of Appeals for the Ninth Circuit, for the many errors so complained of and that a transcript of the record, proceedings and papers in this cause duly authenticated may be sent to the said Circuit Court of Appeals.

Leo V Youngworth

Harry J. McClean

Attorneys for Defendant

[Endorsed]: Original Cr. 3831, S. D. IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION UNITED STATES OF AMERICA, Plaintiff, vs. LOUIS FASSOLLA, charged as Louis Fosella, Defendant. PETITION FOR WRIT OF ERROR AT LAW Filed Apr 27 1922 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy LEO V. YOUNG WORTH, HARRY J. McCLEAN 602 Mer. Nat'l. Bk. Bldg. Los Angeles Attorneys for Defendant

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)	
Plaintiff,	)	Cr. 3831, S. D.
)	
vs.)	
	)	ORDER
LOUIS FASSOLLA, charged)	
as Louis Fosella,)	
)	
Defendant.)	
)	

This 28th day of April, 1922, came the defendant, by his attorneys, and filed herein and presented to the court his petition praying for the allowance of a writ of error, an assignment of errors intended to be urged by him, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial District, and that such other and further proceedings may be had as may be proper in the premises, in consideration whereof, the court does allow the writ of error upon the defendant giving bond according to law in the sum of \$1000.00 which shall operate as a supersedeas bond, and upon the defendant giving bond according to law in the further sum of \$250.00 for costs.

4-28-22

Trippet
District Judge

Approved as to form as provided in Rule 45,

J. C. BURKE,

U. S. District Attorney,

By Mack Meader

. Ass't. U. S. District Attorney

Bail in the sum of \$1000.00 approved Mack Meader
Asst. U. S. Atty.

[Endorsed]: Original Cr. 3831, S. D. IN THE
DISTRICT COURT OF THE UNITED STATES,
IN AND FOR THE SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN DIVISION UNITED
STATES OF AMERICA, Plaintiff, vs. LOUIS
FASSOLA, charged as Louis Fosella, Defendant.
ORDER Filed Apr 28 1922 CHAS. N. WILLIAMS,
Clerk By R S Zimmerman Deputy Clerk LEO V.
YOUNG WORTH HARRY J. McCLEAN 602 Mer.
Nat'l. Bk. Bldg. Los Angeles Attorneys for Defendant.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

UNITED STATES OF AMERICA,)	
)	
	)	Plaintiff,
)	
vs.	)	Cr. 3831, S. D.
)	
	)	SUPERSEDEAS
	)	BOND
LOUIS FASSOLLA, charged)	
as Louis Fosella,)	
)	
Defendant.)	

KNOW ALL MEN BY THESE PRESENTS:
That we Louis Fassolla, as principal, and cash, as

sureties, jointly and severally acknowledge ourselves indebted to the United States of America in the sum of Twelve Hundred and Fifty (\$1250.00) Dollars, lawful money of the United States of America, which we have deposited herewith, upon the following conditions:

WHEREAS, the said Louis Fassolla has sued out a writ of error in judgment of the District Court of the United States, for the Southern District of California, Southern Division, in the case in said court wherein the United States of America are plaintiffs, and the said Louis Fassolla is defendant, for review of said judgment in the United States Circuit Court of Appeals for the Ninth Circuit.

Now, if the said Louis Fassolla shall appear and surrender himself in the District Court of the United States, for the Southern District of California, Southern Division, on and after the filing in the said District Court of the mandate of the said Circuit Court of Appeals and from time to time thereafter as he may be required to answer any further proceedings and abide by and perform any judgment or order which may be had or rendered therein in this case and shall abide by and perform any judgment or order which may be rendered in the said United States Circuit Court of Appeals for the Ninth Circuit and not depart from said District Court without leave thereof, then this obligation shall be void; otherwise, to remain in full force and virtue.

WITNESS our hands and seals this 28 day of April, A. D., 1922.

(Seal)

Louis Fassolla SEAL)

Subscribed and sworn to before me this 28th day of April, 1922.

Chas. N. Williams, Clerk

U. S. District Court Southern District of California

By R. S. Zimmerman,

Deputy.

Taken and approved this 28 day of April, 1922, before me.

Trippet

District Judge.

Examined and Recommended for approval as provided in Rule 29.

Leo V Youngworth

Attorney at law

O. K.

Mack Meader

Asst. U. S. Atty.

[Endorsed]: Original Cr. 3831, S. D. IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION UNITED STATES OF AMERICA, Plaintiff, vs. LOUIS FASSOLLA, charged as Louis Fosella, Defendant. SUPERSEDEAS BOND Filed Apr 28 1922 at —min. past —o'clock — M CHAS. N. WILLIAMS, Clerk Murray E Wire Deputy Leo V. Youngworth Harry J. McClean 602 Mer. Nat'l. Bk. Bldg. Los Angeles Attorneys for Defendant.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	Cr. 3831, S. D.
)	
Plaintiff,	)	ORDER
	)	PERMITTING
vs.	)	CASH
	)	DEPOSIT
LOUIS FASSOLLA, charged	)	IN LIEU OF
as Louis Fosella,	)	BOND.
)	
Defendant.)	

The defendant having sued out a writ of error herein to remove this cause to the Circuit Court of Appeals for the Ninth Circuit to review the judgment entered herein on the 18th day of April, 1922,

IT IS HEREBY ORDERED that he may deposit \$1000.00 in lawful money of the United States with the Clerk of this Court in lieu and operative as a supersedeas bond on said writ of error;

AND IT IS FURTHER ORDERED that he may deposit \$250.00 in lawful money of the United States with the Clerk of this Court in lieu of bond as security for costs of said writ of error.

Dated this 28 day of April, 1922.

Trippet
District Judge

[Endorsed]: Cr. 3831, S. D. Original IN THE
DISTRICT COURT OF THE UNITED STATES,

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION UNITED STATES OF AMERICA, Plaintiff, vs. LOUIS FASSOLLA, charged as Louis Fosella, Defendant. ORDER PERMITTING CASH DEPOSIT IN LIEU OF BOND. Filed Apr 28 1922 at — min. past — o'clock — M CHAS. N. WILLIAMS, Clerk Murray E Wire Deputy Leo V. Youngworth Harry J. McClean 602 Mer. Nat'L Bk. Bldg. Los Angeles Attorneys for Defendant

UNITED STATES OF AMERICA
DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	CLERK'S OFFICE
)	
Plaintiff,)	
)	
vs.)	No. Cr. 3831, S.D.
)	
LOUIS FASSOLLA, charged)	
as Louis Fosella,)	
)	
Defendant.)	PRÆCIPE
)	

TO THE CLERK OF SAID COURT:

Sir:

Please prepare and make return to the writ of error herein and make copies of the following papers on file in your office

1. The information in full;
2. The minutes of trial including verdict;

3. Judgment;
4. Bill of exceptions;
5. Assignment of errors;
6. Petition for writ of error;
7. Order granting writ of error;
8. Citation on writ of error;
9. Writ of error;
10. Supersedeas bond;
11. Bond for costs;
12. Praecipe.

Certify to this record and return with the original writ of error.

Dated this 27th day of April, 1922.

Leo V Youngworth

Harry J. McClean

ATTORNEYS FOR PLAINTIFFS IN ERROR

[Endorsed]: Service of the within praecipe admitted this 17th of May, 1922.

Joseph C Burke

U. S. District Attorney

By Mack Meader

Ass't. U. S. District Attorney

No. Cr. 3831, S. D. U. S. District Court SOUTHERN DISTRICT OF CALIFORNIA UNITED STATES OF AMERICA, Plaintiff, vs. LOUIS FASSOLLA, charged as Louis Fosella, Defendant. PRÆCIPE FOR Record of proceedings in error. Filed May 19 1922 at — min. past — o'clock — M CHAS. N. WILLIAMS, Clerk Murray E Wire Deputy

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN
DIVISION.

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
	)	CLERK'S
vs.)	
	)	CERTIFICATE
LOUIS FASSOLLA,)	
)	
Defendant.)	

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 56 pages, numbered from 1 to 56 inclusive, to be the Transcript of Record on Writ of Error in the above entitled cause, as printed by Plaintiff in error and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation, writ of error, information, verdict, judgment, bill of exceptions, assignment of errors, petition for writ of error, order granting writ of error, supersedeas bond and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Writ of Error amount to and that said amount has been paid me by the plaintiff in error herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this *20th* day of *June*, in the year of our Lord One Thousand Nine Hundred and Twenty-one, and of our Independence the One Hundred and Forty-sixth.

CHAS. N. WILLIAMS,
Clerk of the District Court of the
United States of America, in and
for the Southern District of California.

By *R. S. Zimmerman*
Deputy.

[Seal]